

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN VONDRAK,

Plaintiff,

vs.

No. CIV-05-0172 JB/LFG

CITY OF LAS CRUCES, POLICE OFFICER,
CINDY MCCANTS and NATHAN KRAUSE
Individuals and employees of the Las Cruces Police
Department, and CITY OF LAS CRUCES,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Motion for Protective Order, filed March 16, 2009 (Doc. 150). The Court held a hearing on March 30, 2009. The primary issue is whether the Court should grant Plaintiff John Vondrak's motion to prevent the Defendants from obtaining the discovery that they seek in the Defendants' Motion to Compel and for Determination of Objections, filed March 3, 2009 (Doc. 141). Because the Court has ruled on the motion to compel and found most of Vondrak's objections at issue in that motion to lack merit, the Court will deny this motion for a protective order.

In his motion, Vondrak points out that "[t]his motion relates to the Defendants['] motion to compel which was recently filed with the court." Motion at 1. Vondrak alleges that the discovery that the Defendants seek is not calculated to uncover relevant evidence. Rather, Vondrak contends, the Defendants are on a fishing expedition. See id. at 4.

The Defendants respond that a denial of any part of the motion to compel will function, in effect, like a protective order, because the Court, by sustaining an objection, will prevent the

Defendants from compelling the discovery that is the subject of the objection. See Defendants' Response to Plaintiff's Motion for Protective Order at 1, filed March 25, 2009 (Doc. 164)("Response"). The Defendants therefore have incorporated their arguments from the motion to compel into their opposition to this motion for a protective order. See Response at 2.

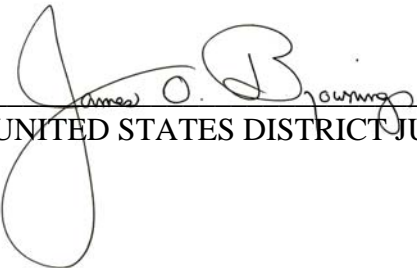
ANALYSIS

The Court largely dealt with the motion for a protective order at the hearing. The Court indicated that it would deny the motion. See Tr. at 5:11-14 (Court). There is merit to the Defendants' argument that, where there is a motion to compel, a protective order dealing with the same issues is unnecessary. Normally, when the Court denies a motion to compel, it has, in effect, given a protective order. At the same time, the Court has no criticism of Vondrak for choosing to take the cautious route and filing a for a protective order along with his opposition to the motion to compel. Rule 37(a)(5)(B) states: "If the motion [to compel] is denied, the court may issue any protective order authorized under Rule 26(c)." In other words, the Federal Rules of Civil Procedure provide for the issuance of protective orders even where the court has denied a motion to compel. It appears that the rule-makers contemplated circumstances where a denial of a motion to compel and the granting of a protective order would not have the same effect. Moreover, given that the rules allow a court to issue a protective order after denying a motion to compel, the Court sees no sound basis to prevent a party from moving for such a protective order, even if such an order might ordinarily appear redundant. The Court will therefore consider the motion as it would any other properly filed motion.

In its Memorandum Opinion and Order, entered March 30, 2009 (Doc. 174), the Court substantively ruled on the objections that Vondrak made to discovery items at issue in the Defendants' motion to compel. Vondrak stated at the hearing that the Court's ruling on the motion

to compel rendered the motion for a protective order moot. See Tr. at 4:8-10 (Byrnes). In the Memorandum Opinion and Order, the Court dealt with all of Vondrak's objections at issue in the motion to compel. For the most part, the Court overruled Vondrak's objections, and ordered him to produce the requested discovery and to provide dates for depositions. In light of the Court's ruling in that Memorandum Opinion and Order, and consistent with what the Court stated at the hearing, the Court will deny as moot Vondrak's motion for a protective order.

IT IS ORDERED that Plaintiff John Vondrak's the Motion for Protective Order is denied as moot.



UNITED STATES DISTRICT JUDGE

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